IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

MACA.No. 1266 of 2006()

OPMV.866/2002 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD
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APPELLANT/2ND RESPONDENT

NATIONAL INSURANCE CO.LTD.,
PUTTUR, D.K., KARNATAKA STATE,
REPRESENTED BY THE MANAGER,
KRO ANNEXE, AJAY VIHAR, M.G.ROAD,
ERNAKULAM, KOCHI 16.

BY ADV. SRI.E.M.JOSEPH

RESPONDENTS/PETITIONER 1 AND 2 AND 1ST RESPONDENT:
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1. **S.LAKSHMAN ACHARY, AGED 44 YEARS,**
   S/O.KUNHAYYA ACHARY,LAKSHMI KRIPA,
   KOIPADY VILLAGE, P.O.KUMBALA, KASARAGOD.

2. **SHAMBAVI,AGED 38,**
   W/O.LAKSHMAN ACHARY, LAKSHMI KRIPA,
   KOIPADY VILLAGE, P.O.KUMBLA, KASARAGOD.

3. **P.ESHWARA BHAT,**
   S/O.SUBRAMONIA BHAT,KRISHNAGIRI FARMS,
   P.O.PANAJE,PUTTUR TALUK, D.K.,KARNATAKA STATE.

BY ADV. SRI.SURESH KUMAR KODOTH FOR R3
SRI.T.B.SHAJIMON FOR R1 AND R2

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC, JJ.
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M.A.C.A NO. 1266 OF 2006
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Dated this the 5th day of March, 2007

J U D G M E N T

P.R.Raman, J.

The appellant is challenging the award in OP(MV)No.866/02 on the file of MACT, Kasargod. The claimants are the legal representatives of the deceased pillion rider in the motor cycle. The accident occurred on 14.4.2002 and the vehicle in which he was travelling hit a lorry and as a result the pillion rider died in the accident. It was found that the negligence is on the part of motor cycle.

2. Even though the motor cycle is insured with the appellant herein, the question that arises for consideration is whether the Insurance Company is liable to pay the awarded amount as per the policy of Insurance. The Tribunal passed an award quantifying the compensation for an amount of Rs.1,94,500/- with 9% interest from the date of application till 31/12/2004 and thereafter at 6% till realisation. The 2nd respondent, who was the appellant therein, was directed to

deposit the amount within one month. Exhibit B1 was the certified copy of the policy. It was the specific contention in the written statement that it is not a comprehensive policy or extended policy to cover a pillion rider and no additional premium was paid. Hence, the award of the Tribunal making the appellant liable is not legally correct.

3. Reliance was also placed on the decision of the Apex Court in **United India Insurance Co.Ltd** v. **Tilak Singh** [**2006 (2) KLT 884(SC)]** Parties are ad idem that the question as to whether the pillion rider is entitled to compensation by the Insurance Company in the absence of any policy of an extended nature, it is now squarely covered by the Apex Court in 2006(2) KLT 884 wherein it was held that the pillion rider will not be covered by Act Policy.

4. In such circumstances, following the decision of the Apex Court, it has to be held that, the award, making the appellant liable, is bad in law and the same is set aside. The remaining part of the award is not disturbed. The deposited amount in such circumstances, is liable to be refunded on an

application made by the appellant before the MACT. In case, the amount is already withdrawn, it is open to the appellant to proceed to recover the same from the owner of the vehicle.

M.A.C.A. is disposed of with the above observation.

P.R.RAMAN, JUDGE

ANTONY DOMINIC, JUDGE

Rp